



Questions and Answers: Draft Economic Analysis for the Sharpnose and Smalleye Shiners

Southwest Region (Arizona • New Mexico • Oklahoma • Texas) www.fws.gov/southwest/

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Q: What action is the U.S. Fish and Wildlife Service (Service) taking?

A: The Service is announcing the Notice of Availability of the draft economic analysis (DEA) for the proposed critical habitat for the sharpnose shiner and the smalleye shiner. The DEA provides estimated costs of the foreseeable potential economic impacts resulting from the proposed critical habitat designation for the two shiner species. The Service is also announcing the reopening of the comment period on the proposed critical habitat for the sharpnose and smalleye shiners for 30 days. The comment period will close on April 3, 2014.

Q: What information is the Service requesting?

A: Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. With respect to the critical habitat proposal for the two shiner species, we are particularly interested in comments concerning:

- (1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.
- (2) Specific information on:
 - (a) The distribution of the sharpnose shiner and smalleye shiner;
 - (b) The amount and distribution of sharpnose shiner and smalleye shiner habitat; and
 - (c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the critical habitat designation and why; and
 - (d) What areas not occupied at the time of listing are essential to the conservation of the species and why.
- (3) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat.

- (4) Information on the projected and reasonably likely impacts of climate change on the sharpnose shiner and smalleye shiner and proposed critical habitat.
- (5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, the benefits of including or excluding areas that exhibit these impacts.
- (6) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.
- (7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.
- (8) Whether any areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.
- (9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Comments or information submitted on the proposed rule during the initial comment period from August 6, 2013, to October 7, 2013, do not need to be resubmitted. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination will take into consideration all written comments and any additional information we receive during both comment periods.

Q: How can the public submit information on the proposal?

A: The Service is requesting comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

Written comments and information concerning this finding can be submitted by one of the following methods:

- (1) **Electronically:** Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the critical habitat proposal and associated draft economic analysis by searching for FWS–R2–ES–2013–0008, which is the docket number for the critical habitat rulemaking.
- (2) **By hard copy:** Submit comments on the critical habitat proposal and associated draft

economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2013-0008; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

Comments must be received within 30 days, on or before April 3, 2014. The Service will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The Service is not able to accept email or faxes.

For further information contact Debra Bills, Field Supervisor, Arlington, Texas, Ecological Services Field Office, 2005 NE Green Oaks Blvd., Suite 140, Arlington, Texas 76006, by telephone (817-277-1100), or by fax (817-277-1129). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

Q: How would the two shiners benefit from an ESA listing?

A: Species listed as endangered or threatened under the ESA benefit from conservation measures that include recognition of threats to the species, implementation of recovery actions, and federal protection from harmful practices.

Recognition under the ESA results in public awareness and conservation by federal, state, tribal, and local agencies; private organizations; and individuals. The ESA encourages cooperation with the States and other partners to conserve listed species.

The ESA also requires the Service to develop and implement recovery plans for the conservation of threatened and endangered species. Recovery plans outline actions that are needed to improve the species' status such that it no longer requires protection under the ESA. The Service develops and implements these plans in partnership with the species experts; other federal, state, and local agencies; Tribes; nongovernmental organizations; academia; and other stakeholders. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Examples of typical recovery actions include habitat protection, habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction and outreach and education.

Under the ESA, federal agencies must ensure that actions they approve, fund, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. In addition, under the ESA, endangered animal species cannot be killed, hunted, collected, injured, or otherwise subjected to "harm." Endangered species cannot be purchased or sold in interstate or foreign commerce without a federal permit.

Q: What is critical habitat?

A: Critical habitat is a term in the ESA that identifies geographic areas occupied at the time a species is listed that contain the physical or biological features essential for the conservation of a threatened or endangered species. It is further defined as, areas outside the geographic area occupied by the species at the time of listing that are essential for the conservation of the species.

The ESA defines “conservation” as the actions leading towards the eventual recovery of a species to the point where it is no longer threatened or endangered.

Critical habitat provides protection from the prohibition against destruction or adverse modification from actions carried out, funded, or authorized by a federal agency and is carried out through required consultation under section 7 of the ESA. Due to legal challenges, the Service no longer relies on the regulatory definition of “destruction or adverse modification” of critical habitat. Instead, the Service relies on the statutory provisions of the ESA to complete adverse modification analysis.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation identifies areas that are important to the conservation of federally listed threatened or endangered species. A critical habitat designation requires federal agencies to consult with the Service on any of their actions that may affect designated critical habitat. The Service can then recommend ways to minimize any adverse effects. It imposes no requirements on State or private actions on State or private lands where no federal funding, permits or approvals are required.

Critical habitat designation has several benefits including: (1) Triggering consultation under section 7 of the Act in new areas for actions in which there may be a federal nexus where it would not otherwise occur because, for example, it has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

Q: What is the purpose of designating critical habitat?

A: A critical habitat designation generally has no effect on situations that do not involve a federal agency — for example, a private landowner undertaking a project that involves no federal funding or permit. Federal agencies are required to consult with the Service on actions they carry out, fund, or authorize to ensure that their actions will not destroy or adversely modify critical habitat. In this way, a critical habitat designation protects areas that are necessary for the conservation of the species.

Q: What is an economic analysis?

A: Under the ESA, the Service is required to take into consideration the economic impact, and any other relevant impact, of designating particular areas as critical habitat. An economic analysis provides estimated costs of the foreseeable economic impacts of a critical habitat designation.

Q: What are the potential economic impacts of designating critical habitat for the two shiner species?

A: The draft economic analysis provides estimated costs of the foreseeable potential economic impacts resulting from the proposed critical habitat designation for the sharpnose and smalleye shiners. The draft economic analysis quantifies economic impacts of the two shiners conservation

efforts associated with the following categories of activity: water management, including flood control and drought protection operation; instream projects; transportation activities including bridge construction; oil and natural gas exploration and development; and utilities projects, including water and sewer lines. All incremental costs are administrative in nature and result from the consideration of adverse modification in section 7 consultations. The total present value impacts anticipated from the designation of critical habitat for the smalleye and sharpnose shiners is likely to be less than \$84,000 per year.

Q: Do listed species in critical habitat areas receive more protection?

A: Listed species and their habitat are protected by the ESA whether or not they are in an area designated as critical habitat. To understand the additional protection that critical habitat provides to an area, it is first necessary to understand the protection afforded to any endangered or threatened species, even if critical habitat is not designated for it.

The ESA forbids anyone to import, export, or engage in interstate or foreign sale of endangered and threatened animals and plants without a special permit. It also makes “take” illegal forbidding the killing, harming, harassing, pursuing or removing the species from the wild. The ESA requires that federal agencies conduct their activities in such a way as to conserve species. The ESA also requires federal agencies to consult with the Service to conserve listed species on their lands and ensure that any activity they fund, authorize or carry out will not jeopardize the survival of a threatened or endangered species. This is known as consultation.

In consultations for species with critical habitat, federal agencies are required to ensure that their activities do not destroy or adversely modify critical habitat to the point that it can no longer serve its conservation role in the species' recovery. The greatest benefit of critical habitat occurs in areas that are currently unoccupied by the species, but are needed for its recovery. With critical habitat designations, these unoccupied areas are protected by the prohibition against destruction and adverse modification of critical habitat; however, no unoccupied areas are currently proposed for designation as critical habitat for either the sharpnose or smalleye shiner.

Q: How would a critical habitat designation affect my private land?

A: Requirements for consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations only apply to federal lands or federally funded or permitted activities on private lands. Activities on private or state lands that are funded, permitted or carried out by a federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the section 7 consultation process with the Service if those actions may affect critical habitat or a listed species. The federal action agencies are responsible for consulting with the Service.

Through this consultation, the Service would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise affecting species or their habitat (e.g., suitable habitat

outside of critical habitat), and actions on non-federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.

Q: When an area is designated as critical habitat, are all human activities in the area prohibited?

A: No. The only activities prohibited in these areas are federal actions that are likely to result in destruction or adverse modification of the critical habitat for the two shiner species. The consultation process supports the recovery of species and their ecosystems. Consultations provide ways to implement recovery tasks by addressing threats to listed species that may result from federal agency programs and activities through a collaborative process. For more information go to: <http://www.fws.gov/endangered/esa-library/pdf/consultations.pdf>.